Supreme Court, U.S.
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No. 93-442

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

PATRICIA B. FARR,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE NINTH CIRCUIT COURT OF APPEAL

REPLY TO OPPOSITION

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In its opposition to Farr's petition for certiorari, the Respondents claim this Court should decline review of this case because it "is in a wholly interlocutory posture" due to a partial reversal and remand by the appellate court. The opposition also makes several unsupported assertions, and some outright misrepresentations regarding this case. Petitioner feels compelled to briefly address each of these matters.

A. Review of The Affirmed Portion of The Current Decision Cannot Be Made Later.

First of all, Respondent contends this Court should totally decline review because of the partial reversal and remand of a portion of petitioner's suit (Opp. 8). However, Respondent has failed to explain just how, at a later date, this Court could possibly review the portion of the appellate decision which affirmed the trial court now. Such affirmances are presumably final decisions, and would simply not be part of any future judgement on appeal.

According to the Rules of this court (Rule 13.1), review of a judgement must be sought within 90 days of it being rendered. Therefore, under the Rules of this Court (and Respondent's contention), when there is a partial reversal, the decision(s) or issues an appellate court affirms would somehow have to be raised again in a future decision in order to be reviewable by this Court. Just how or why an appellate court would again render a decision on such matters in the future appears to be a mystery. However, that is exactly what would be required in order for this Court to review such issues. Therefore,

Respondent's contention about denying certiorari because this case is in an "interlocutory posture" should be rejected.

B. Respondents' Argument Misrepresents The Appellate Cases Cited And Conflicts With Itself.

Respondents also contend that this Court's decisions in *United States v. Whiting Pools*, 462 U.S. 198 (1983) and *United States v. National Bank of Commerce*, 472 U.S. 713 (1985) do not conflict with the appellate court decision made in the case at bar. Respondents apparently contend that the United States immediately obtains a 'title' interest in property levied by the IRS when that property is not of a type 'subject to being sold'. (Opp. 5-6). Based on this theory, Respondents contend that the United States may not be sued under 28 U.S.C. §2410(a) because no more lien exists. Respondents cite no direct authority for their theory of title transfer, and Petitioner submits such a contention is in direct conflict with statements made in the above decisions of this Court. In both cases, this Court explicitly stated that the levy provisions of the Internal Revenue Code do not transfer ownership to the IRS.

Further, in an attempt to distinguish the Second Circuit's decision in *Kulawy v. United States*, 917 F.2d 729 (1990), Respondents misrepresent the facts of that case by claiming "the government had only a lien on [kulawy's] property." (Opp. 6). In fact, the property had been *seized* by the IRS *before* the suit was filed. *Id.* at 731. Even though the property had been seized prior to the suit (and auctioned while the suit was

pending), the court ruled the suit was proper under §2410(a) because there was a lien on it. *Id.* at 733-4.

Respondents also misrepresent the facts of the case in *Goodwin v. United States*, 935 F.2d 1061 (9th Cir. 1991) by claiming the property had not been sold at the time suit was commenced. (Opp. 6, ftnote 3). In fact, the property had been sold, and an IRS deed had been recorded for the government, a full 2 years before the suit was initiated. 935 F.2d at 1063. Nonetheless, the 9th Circuit held suit was proper under §2410(a).

Respondents can apparently cite no direct authority for their contention that an IRS levy automatically transfers 'title', and thereby removes a lien on property levied/seized by the IRS. Moreover, Respondents' misrepresentations of the facts of the conflicting appellate cases they sought to distinguish should indicate a lack of merit in their argument.

Although this Court has previously stated that an IRS levy does not transfer ownership in levied/seized property, there has apparently been no decision by it as to whether or not a lien still exists on such property. As set forth in Petitioner's petition, the appellate courts are in conflict over this issue. Moreover, Respondents' statement that 'quiet title' actions may be used to "challenge the procedural regularity of ... seizures" (Opp. 4) appears to contradict the argument in the opposition.

Respondents also contend that Farr's remedy is a tax refund suit under 26 U.S.C. 7422. (Opp. 5). However, Respondents apparently overlook the fact that part of

Farr's current suit was exactly for that, and the district court dismissed the entire action without even commenting on that cause, with the appellate court affirming the dismissal, again, without comment. (Pet. 4-5). Although part "A" of Farr's petition was devoted entirely to this dismissal, Respondent has failed to even address it. Therefore, a refund action is apparently no remedy at all since it has already been ignored and dismissed by the courts.

C. Unauthorized Disclosures.

In arguing against Farr's position regarding unauthorized disclosures, Respondents again make misrepresentations. Contrary to Respondent's contention that the appellate court ruled that required notices had been issued prior to collection in this case (Opp. 8, ftnote 6), the court in fact stated "we do not hold that Farr did or did not receive notices, nor do we hold that the IRS procedures were or were not defective." (Pet. 16) 990 F.2d at 455. Thus, neither the legality of the collection action, nor Petitioner's alleged tax delinquency has ever been determined. Moreover, since this case came to appeal as a result of a dismissal for failure to state a claim, the allegations of Petitioner's complaint in the trial court are the only relevant consideration, and they must be taken as true. According to those allegations, the IRS totally failed to comply with the notice and assessment requirements of the Internal Revenue Code (Pet. 2), a due process violation. Therefore, no authority existed for any collection action or disclosures.

Respondents also appear to take the same position

as Petitioner in that the purpose of 26 U.S.C. 6103(k)(6) is to allow disclosures in order to *obtain* information. (Opp. 7, and ftnote 5). However, Respondents totally fail to explain how the issuance of lien and levy notices would be for the purpose of *obtaining information.* Such notices are most obviously for the purpose of collection, not obtaining information. Therefore, §6103(k)(6) could not be any exception for making the disclosures. Moreover, even if the section did allow for the type of disclosures at issue here, it could not possibly allow for disclosures made in pursuit of unauthorized and illegal collection actions.

CONCLUSION

Respondents' opposition appears to be full of misrepresentations regarding this case, and other cases related to it. Petitioner finds it hard to believe that the number of misrepresentations made in the opposition were accidental or unintentional. Therefore, the opposition should be given little weight, if any.

Petitioner has demonstrated that, absent her suit to quiet title, she has no remedy for addressing the illegal collection actions of the IRS. Her refund cause was summarily dismissed without comment, and the dismissal affirmed on appeal, again, without comment. Respondents have pointed to no other remedy. Moreover, Respondents are apparently unable to cite any direct authority for their theory of title transfer to the IRS due to a mere levy/seizure, and this Court has previously decided to the contrary. Accordingly, this Court should grant certiorari and reverse the appellate

court.

Respectfully submitted,
Patricia B. Farr, In Pro Per

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